

GUIDE
for the
INDUSTRIAL ACCESS PROGRAM
administered by the
Virginia Department of Transportation

Secondary Roads Division

Memorandum SR-49-02

Richmond, Virginia

April 2002

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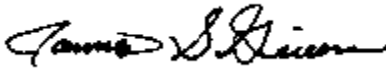
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VIRGINIA DEPARTMENT OF TRANSPORTATION

SECONDARY ROADS DIVISION

MEMORANDUM

Subject: INDUSTRIAL ACCESS PROGRAM		Number: SR-49-02
Specific Subject: GUIDE FOR THE INDUSTRIAL ACCESS ROADS PROGRAM per Commonwealth Transportation Board Policy Adopted Feb. 15, 2001 and Code of Virginia § 33.1-221, as amended.		Date: April 3, 2002
		Supersedes: SR-49-92, dated March 20, 1992
Directed To: LOCAL GOVERNMENTS DISTRICT ENGINEERS RESIDENT ENGINEERS	Signature:  State Secondary Roads Engineer	

This revised document was prepared to incorporate the change in the Industrial Access Program by action of the Commonwealth Transportation Board at its meeting on February 15, 2001 which addressed the application of this program for regional industrial facilities established pursuant to §15.2-6400 through §15.2-6402 of the Code of Virginia. It also reflects the Commonwealth Transportation Board's action of July 15, 1999 extending the maximum time for bonded projects from three to five years and several minor changes to better reflect current practices in administering this program.

All previous instructions regarding the administrative procedures for industrial access projects are hereby superseded.

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FREQUENTLY ASKED QUESTIONS

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Refer to Page 5, section III.B

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Refer to Page 4, section III and APPENDIX IX, Page 2 (under “SECONDARY ROADS DIVISION REVIEW”)

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Guide for the INDUSTRIAL ACCESS PROGRAM

I. PURPOSE:

The Industrial Access program is an incentive program designed to provide funds for access road improvements in order to promote industrial development and the establishment of sustainable industries that create jobs and generate tax revenues within the locality. Industrial Access Funds may be allocated by the Commonwealth Transportation Board (hereinafter referred to as “CTB”) to be used for financing the construction or improvement of secondary or local system roads within counties, cities and towns to provide adequate access for sites on which new or substantially expanding manufacturing, processing or other qualifying establishments will be built or are already constructed.

II. DEFINITIONS:

A. Project Cost

“Cost of constructing or improving” includes the actual construction cost of a roadway built to Virginia Department of Transportation standards for accommodating the projected industrial traffic, including shoulders and ditches, but excluding other items such as curbs and gutters, storm sewer systems, sidewalks, additional traffic lanes, medians, lighting, right-of-way, and relocation of utilities. Roadway features other than those covered by this program may be included in a project, provided that the costs of these features are borne by others. Reasonable costs of preliminary engineering and surveying for the road are allowable.

Costs incurred (i.e., paid items or those for which a contract or purchase order has been executed) prior to allocation by the CTB are not reimbursable.

B. Adequate Access

“Adequate Access” means a road from a location on or outside the property line of the industrial site to the nearest adequate publicly maintained road. Industrial Access funds shall not be used to construct or improve roads on a privately owned site.

Adequate access may require the construction of a new roadway, or the improvement of an existing road (see page 13, paragraph IV.D), or a combination of the two. Where a new roadway is requested, care shall be taken in locating the road to assure that it serves primarily to provide economical access to the qualifying industry rather than to facilitate adjacent land development.

Standards for a new or improved roadway will vary according to the amount of industrial and other traffic it is projected to accommodate. For all roads in the state secondary system, it is customary to construct a good two-lane road with shoulders and a pavement width of 20 to 24 feet. In cities and towns, for existing streets which are less than 30 feet wide but which qualify for payment of maintenance funds, a similar standard is followed. However, for new roadways in cities

and those towns that maintain their own street systems, a maximum of a 30-foot pavement width can be funded through the program (when necessary to qualify these roads for future maintenance payments).

Any parcel abutting an adequate publicly maintained road is deemed to have access by virtue of its location and is ineligible for funding to construct a new roadway, unless the existing road is a limited access highway and no other access exists. Extreme topography that makes an entrance for such a parcel difficult or expensive is not a justification for use of state funds to construct an entrance road. Under certain conditions, however, a qualifying establishment on an abutting parcel may justify improvement of the existing road (see page 13, paragraph IV.D, Improvements to Existing Roads).

C. Qualifying Establishments

“Manufacturing, processing or other qualifying establishments” means those establishments determined as qualifying by the CTB in consultation with the Virginia Department of Business Assistance. These standards include consideration of the establishment itself as well as the impact of the proposed facility, given the type of employment and tax base generated for the Commonwealth of Virginia as a whole and whether the industry meets the definition of a “Basic Employment Industry” as determined by the Department of Business Assistance.

Excluded from consideration are the following establishments: schools, hospitals, libraries, airports, armories, shopping center, speculative office buildings, apartment buildings, professional offices, residential developments, churches, hotels, motels, government installations or similar facilities, whether public or private.

D. Qualifying Investment

“Qualifying Industrial Investment” or “Eligible Capital Outlay” shall usually include the cost of the land, the building cost, and the cost of newly purchased manufacturing or processing equipment. Costs for items such as office equipment, office computer systems, manufacturing equipment transferred from another plant, and rolling stock are ineligible. Also ineligible are legal fees, taxes, recording fees, interest and similar type expenses.

Eligible investments require documentation such as originals of deeds, executed construction contracts, cancelled checks, and purchase orders, and other documentation deemed necessary to validate capital investment expenditures. Capital costs incurred more than six months prior to date of resolution of governing body will normally be disallowed.

Lease arrangements for land and buildings, as opposed to direct property ownership by an industry, may require extraordinary documentation to establish the amount of eligible capital investment. Further, the inclusion of a tenant’s option to purchase does not constitute tenant’s capital investment. A qualifying lease must be for a term of no less than five years, must require payments equivalent to those for comparable properties, and must include a substantial financial penalty for default or early termination by the leasing industry.

Lease-purchase agreements, depending on their specific provisions, may qualify as eligible capital investments. To qualify, these must be legitimate financing instruments for the payment of an owner's actual and reasonable capital costs and profit, plus market-rate interest. Further, there must be provision for substantial penalty in the event that an industry defaults, and provision for the transfer of full ownership of subject real property to the qualifying industry upon the timely completion of a specified payment schedule.

If a lease or lease-purchase agreement is considered acceptable, the qualifying investment will be the owner's documented cost to develop the leased premises, along with any eligible items installed by the leasing industry. If the lease does not meet the criteria for acceptance, no capital outlay credit can be established by the leasing industry.

E. Under Contract

"Under firm contract" means that there is a binding construction contract between a property-owning industry and a qualified general contractor to construct a building or buildings for new or expanding manufacturing facilities on that property.

Construction of a building or other facilities by an industry acting in its own behalf does not constitute the necessary arm's length contractual obligation. It is necessary for such an industry to complete the building and have an independent appraiser (acceptable to the Department) establish the eligible capital investment upon completion, before construction of an access road is authorized. In such instances, it may be better to request a bonded project.

F. Bond or Other Acceptable Device

"Bond or other acceptable device" means:

- a surety bond issued by a commercial bonding or insurance company;
- an irrevocable letter of credit established with a bank or other financial institution;
- a certificate of deposit registered to the locality or jointly with the Virginia Department of Transportation with an accompanying signed certification;
- or an escrow account established under agreement between the locality and the Virginia Department of Transportation.

The purpose of such instrument is to provide a means for the Department of Transportation to recover the funds expended on a bonded project in the event sufficient capital outlay is not documented within the five-year bonded period. The conditions of any such device must authorize the Department of Transportation to collect the appropriate amount within 30 days of the end of the bonded period if other suitable arrangements for payment have not been made by the locality. The bond or other device must be provided by the locality. See APPENDIX VIII. A, APPENDIX VIII. B, APPENDIX VIII. C, and APPENDIX VIII. D for examples of approved formats of surety devices.

III. PROCEDURES:

An initial request to a local governing body for Industrial Access funding usually takes four to six months to reach approval by the CTB. Meeting the conditions of CTB approval often requires another two or more months. It should be remembered that a number of different local and state governmental officials and bodies, some of which, including the CTB meet once each month, will review each request.

Preparing and approving local-state agreements (if necessary), environmental and historical reviews, advertising for bids, awarding a contract, and constructing the road will require additional time. Two to four months should be allowed to complete the SERP (State Environmental Review Process), which may be in addition to the time required for environmental permits. The SERP process (see page 7, paragraph F) must be completed prior to any land disturbance activity. *Planning ahead for an access road project is important.*

If an industrial development authority, a locality, or a developer plans to develop an industrial park, or if an industry intends to locate within an industrial park, please refer to APPENDIX I for guidance relating to industrial parks.

The roles and responsibilities of each party are illustrated in Figure 1 (see page 11) described in the following sections.

A. The Industry

After the industry has made a decision to locate on a particular site, the industry representatives should then provide the following to the locality and the Resident Engineer.

1. A preliminary plan showing the entire parcel of land, and the locations of: the building, other major site features, the proposed entrance, the proposed access road, and existing public roads and highways in the immediate vicinity of the site. If the site is part of a subdivided industrial park, all parcels must be delineated and numbered.
2. A letter of request to the appropriate local governing body on its corporate letterhead incorporating the following information:
 - a. Intent to build or expand on a designated site
 - b. Description and location of the site
 - c. Target date for building construction
 - d. Target date for beginning plant operation
 - e. Capital investment planned on the site, itemized
 - f. Product or products to be manufactured
 - g. The number of new jobs to be created
 - h. Access road improvements requested
 - i. Estimates of the numbers of additional employee vehicles and truck traffic

which will use the access road on an average business day

It is also advisable to forward a copy of this letter to the Director, Existing Business Services, Virginia Department of Business Assistance, P. O. Box 446, Richmond, Virginia 23218-0446.

B. The Local Government

The local government serves as the coordinator for all Industrial Access applications. After reviewing the application and consulting with the local Resident Engineer (or other official designated to represent VDOT's local Residency office; for the purposes of this guide, this designate will be referred to as the "Resident Engineer"), the locality will officially request the Industrial Access allocation with the appropriate resolution depending on whether requesting a "regular", "bonded" or "regional industrial facility authority" project.

If Industrial Access funds are requested to construct a new road (as opposed to improving an existing public road), please see APPENDIX I for a discussion of whether the parcel in question is likely to qualify. For improvements to existing roads, please refer to page 13, paragraph IV.D, "Improvements to Existing Roads". *For Industrial Access projects, the locality will be the responsible party for all contingencies, which generally include the execution of an agreement with VDOT, right of way acquisition, provision of appropriate surety, obtaining environmental permits, implementation of environmental commitments identified through the SERP and ineligible costs associated with the access project.*

1. Regular Projects (where an existing industry is expanding or a new industry is under firm contract to build):

Counties, cities, and those towns which receive highway maintenance payments under §33.1-41.1 of the Code of Virginia may request funding for a road to an industry or other qualifying establishment by resolution directly to the Resident Engineer of the Virginia Department of Transportation in that locality. In other towns, the request by a Town Council should be concurred in by a separate resolution of the County Board of Supervisors.

Allocations for road construction are limited to one-tenth of the qualifying capital investment; where the amount of such investment is not at least ten times the estimated cost of road construction, the resolution should state that the locality will assure the provision of the construction funds not justified by the capital investment. No funds administered by the Department may be utilized in providing any such supplemental financing for a new road.

For new roads, the resolution should state that right of way and utility relocation will be provided at no cost to the Department, and that the road will be accepted into the appropriate road system for maintenance. The identity of the industry is also to

be specified. See APPENDIX II. A for a suggested resolution.

2. Bonded Projects (where no industry is under contract to build or when the identity of the industry is held confidential):

Where a county, city, or town desires to have an industrial access road constructed in anticipation of a commitment by a manufacturing, processing or other qualifying establishment to locate, such a request may be made as above. However, it will be necessary that the governing body guarantee to the CTB that a bond or other acceptable surety will be provided to cover the cost of the road which is not yet justified by qualifying industrial investment. For new roads, the resolution should assure that right of way and utility relocation will be provided at no cost to the Department.

It is also necessary that the resolution of the governing body state that, should no establishment acceptable to the CTB be constructed or under firm contract within the time limit of the bond, such bond shall be forfeited. During the term of the surety, the locality may request a partial reduction in the value of the surety. This reduction would be commensurate with the amount of qualified capital investment properly documented. If only partial qualifying investment occurs on appropriate site(s) within the time limit of the bond, proportional credit against the bond will be granted for that partial investment. The time limit shall be 5 years from the date of allocation by the CTB. See APPENDIX II. B for a suggested resolution.

While the bonded project process allows an excellent opportunity for localities to receive an allocation and build an access road that may attract qualifying industries, it also represents a risk and localities need to consider the financial impacts if they are unable to attract qualifying industries with sufficient capital investment within the five year bond period.

Frequently in the development of an industrial park, road costs will exceed one-tenth the amount of qualifying capital investment of the first industry. In such circumstances, it is possible to combine a regular project and a bonded project, in order to provide for both present and prospective industries. These are somewhat complicated, and are not easily explained in advance. The local Resident Engineer will assist a local government in the specific procedures to be followed in such an instance.

3. Regional Industrial Authority Projects

A locality may request Industrial Access funds on behalf of a regional industrial authority. If an eligible site is owned by such a regional industrial facility authority, as defined in §15.2-6400 et seq. of the Code of Virginia, funds may be allocated for construction of an access road project to that site without penalty to the jurisdiction in which the site is located. This provision may be applied to one regional project per fiscal year in any jurisdiction, with the same funding limitations as prescribed for

other individual projects. The host locality will provide the required surety if a bonded project allocation is requested and execute the local-state agreement.

C. The Resident Engineer

The Resident Engineer of the Virginia Department of Transportation will assist the county, city, or town in preparing a resolution requesting funding, in preparing sketches and cost estimates for requested road improvements, initiating the SERP process, and in assembling a file with information necessary for review by other offices of the Department of Transportation and by the Department of Business Assistance. This assembly of information will be forwarded to the District Administrator with a recommendation regarding the application.

D. The District Administrator

The District Administrator will verify road design standards and cost estimates, and will forward the assembly with a recommendation to the office of the State Secondary Roads Engineer.

E. The Secondary Roads Engineer – Coordination and Recommendations

The State Secondary Roads Engineer will coordinate review of the application between the Departments of Business Assistance and Transportation. A site visit may be scheduled, a recommendation will be requested from the Department of Business Assistance indicating whether, in its judgment, the industry is a qualifying establishment or the development constitutes an appropriate use of funds and whether it recommends that an allocation be made. After all prerequisites have been met for a viable project, including the signed SERP acknowledgement form, the State Secondary Roads Engineer may recommend approval to the CTB, normally after reviewing requests with the CTB Access Roads and Grounds Transportation Committee.

F. The State Environmental Review Process (SERP)

A memorandum of agreement (MOA) was executed by the Secretary of Natural Resources and the Secretary of Transportation on July 31, 1991. This document requires that the state natural and historic resource agencies be provided an opportunity to comment on all state-funded road projects at the earliest stage of development. The State Environmental Review Process (SERP) ensures that state resource agency views and interests will be considered in the project development process from concept through construction. The MOA for SERP was created pursuant to the Code of Virginia, §10.1-1188 (Article 2, Environmental Impact Reports of State Agencies).

Projects developed under the Industrial Access Program often must address a much more compressed development schedule than regular construction projects, in order to accommodate a locality's or industry's desire for a facility or site to be accessed and eventually operational. The administrative aspects of the SERP coordination may take up to

four months to complete. Therefore, the time necessary for completion of the SERP and any commitments that may result from this review must be anticipated in the project's development schedule often prior to the CTB's approval of, and allocation to, an Industrial Access project. For this reason, the locality and the Department's Resident Engineer must work together in determining the viability of each proposed Industrial Access Project with respect to the development schedule proposed for the project. The Resident Engineer will initiate the SERP process once the locality provides the location information and requests SERP initiation. The locality will be notified once the SERP is complete and informed of any environmental commitments. Also, officials with local governments requesting Industrial Access funds are directed to the SERP acknowledgement form found within Appendix VI. This acknowledgement addresses environmental responsibilities associated with preliminary review of state-funded projects. The completed form must accompany each request for Industrial Access funding.

Also, please refer to APPENDIX VII within this guide. This document outlines the responsibilities involved with the administration of the SERP for state funded projects. Where projects are to be administered by the locality requesting Industrial Access Program funds, this document will be made a part of the local-state agreement. ***The agreement must be fully executed by the locality and the Department prior to the locality entering into any contract for project work and before initiating any land disturbance activities that would impact the area of the proposed access road project.***

Should additional information and guidance of the SERP be desired, please refer to the State Environmental Review Process Handbook. Specific questions or concerns regarding the SERP may be addressed to the Department's Environmental Quality Division (1201 East Broad Street, Richmond, VA 23219, Phone 804-371-6752).

G. CTB - Allocation

The CTB, upon consideration of a complete application, may allocate funds for an access project. Contingencies which must be satisfied will be specified in the language of the allocation resolution. This allocation is for the exclusive purpose of financing the eligible costs actually incurred in constructing the specific access facility rather than as an unrestricted grant.

Expenditure of funds will be authorized when all contingencies of the CTB have been satisfied.

H. Administration

1. When funding for an Industrial Access project is approved by the CTB, the project is deemed viable. However, it is subject to the same rules of design, right of way acquisition, environmental review, scheduling for advertisement, bidding, and construction as other projects administered by the Department.
2. The Secondary Roads Division prepares a local-state agreement between a

county, city, or town and the Department if: 1) the locality wishes to administer the Industrial Access project itself; 2) the project requires matching funds; 3) the project includes ineligible project costs; or, 4) the project requires the provision of a surety. The local-state agreement requires that the locality follow state procurement regulations in the administration of any project's construction, and specifies responsibilities, schedules, and payment of costs. Such agreement is subject to review and concurrence by the Secondary Roads and Fiscal Divisions of VDOT and by the office of the Attorney General, prior to its execution by a local governing body and Virginia Department of Transportation management. The local-state agreement is the contract that authorizes the locality to perform any work that can be reimbursed from VDOT funds and *must be executed prior to authorizing work*. Any cost incurred or contract executed by a local governing body or its agent, before an agreement is signed by all parties, is the responsibility of the local governing body, unless otherwise agreed to by the State Secondary Roads Engineer.

3. The Resident Engineer provides documentation of the dedicated right of way for the project to the District Right of Way Manager. The District forwards this information and its recommendation to the VDOT's Right of Way and Utilities Division Director, who certifies that right of way and utility adjustments for the project have been obtained at no cost to the Industrial Access Program fund. The provision of unencumbered right of way by the locality includes completion of any extensive environmental studies and required mitigation of existing environmental conditions.
4. The locality provides payment to the Resident Engineer for any required matching funds, ineligible project costs, or eligible projects in excess of the Industrial Access allocation. The Resident Engineer forwards this payment to the Secondary Roads Division, which will ensure that it is credited to the project.
5. The local government provides documentation to the Resident Engineer that an industry has made firm commitment to locate on an eligible site (executed construction contract) and an official letter from the industry's chief financial officer outlining capital expenditures as specified in this document under "Eligible Capital Outlay."

If bonded, the local government shall provide required surety to the Resident Engineer. The Resident Engineer forwards the surety to the Secondary Roads Division.

6. The expenditure of funds for the project may be authorized by VDOT only after all contingencies of the Transportation Board's resolution have been met.

A VDOT-administered project must be authorized before the project may be advertised or constructed. A locally administered project must be authorized before VDOT will reimburse a locality for eligible costs attributed to the

construction of the project. Also, for locally administered projects, appropriate documentation of costs and billing information must be provided by the locality.

7. Once a project is authorized, the Resident Engineer will coordinate all aspects of the construction of VDOT-administered projects. The Resident Engineer also will monitor the construction of locally administered projects and will notify the Secondary Roads Division when the construction is started and completed.

I. Acceptance into System

New roadways, upon completion, are opened to public use and are to be accepted into the appropriate system for maintenance. In all counties except Arlington and Henrico, in towns not maintaining their own road systems, and in the former Nansemond County portion of the City of Suffolk, these roads will be added to the Secondary System of State Highways. In cities, in towns receiving maintenance payments, and in the Counties of Arlington and Henrico, the roads are to be taken into the road systems of these localities. If an industrial park developer or other landowner intends to close or gate a road into an industrial park for security or other reasons, the Industrial Access Program is an inappropriate source of funding.

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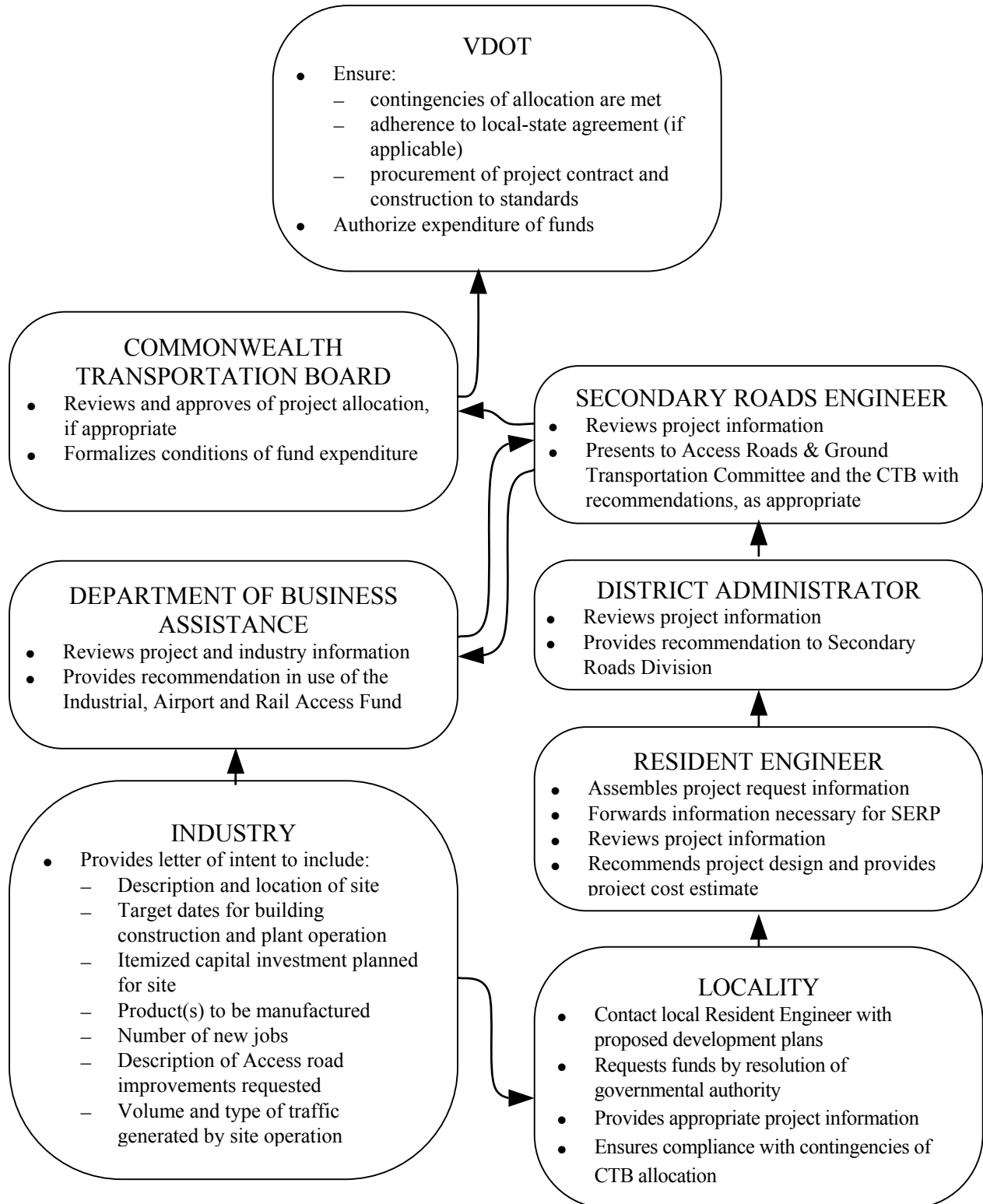


Figure 1
FLOW CHART OF PROCESS THROUGH FUND AUTHORIZATION

IV. LIMITATIONS:

A. Maximum Allocation

The maximum allocation to any regular project is limited to the lesser of either: the reasonable cost of a two-lane road (see page 1, paragraph II.A) or 10% of the qualifying industrial investment made by the private industry.

Example 1	Cost of constructing road	=	\$ 90,000
	Qualifying investment	=	1,500,000
	10% of qualifying investment	=	150,000
	Allocation is limited to		\$ 90,000
Example 2	Cost of constructing road	=	\$ 90,000
	Qualifying investment	=	600,000
	10% of qualifying investment	=	60,000
	Allocation is limited to		\$ 60,000

Subject to available funding, the maximum unmatched allocation to any county, city, or town within any one fiscal year is \$300,000; allocations may be used for one or more projects. Further, the total amount available statewide under this program is limited by statute.

A locality may receive an allocation on behalf of a regional industrial authority without impacting its annual allocation eligibility. An allocation for a regional industrial facility authority project is subject to the same limitations as other Industrial Access projects.

When the cost of an individual access project exceeds \$300,000, the county, city, or town may request up to \$150,000 in supplemental funds which must be matched on a dollar-for-dollar basis by a contribution from the general fund of the county, city, or town. Such supplemental funding shall be limited to 5% of the qualifying industrial investment above \$3,000,000.

B. Funds Not to be Anticipated

It is the intent of the CTB that industrial access funds be requested as reasonably needed by the localities of the state, but that these funds not be anticipated from year to year. Unused eligibility from a preceding year shall not be carried forward to an ensuing fiscal year.

C. Time Limits for Regular Industrial Access Projects

In order to ensure the most effective use of the limited funds available for the program, allocations made for new access roads or improvements to serve a specific industry are expected to be committed by contract or otherwise under construction within 2 years

from the date of CTB approval. Allocations for projects that are not completed or actively under way within 2 years of project approval by the CTB may be deallocated for funds to be available for new projects unless the State Secondary Roads Engineer grants an exception due to unusual circumstances. At the end of 22 months following the allocation, if the proposed improvements to serve the new or expanding industry have not been initiated, the locality shall submit a written explanation of the status of the project and reason for delay if an extension of time is needed. Nothing precludes the locality from reapplying for an allocation in the future once the plans for industrial development are more imminent.

D. Improvements to Existing Roads

Where an existing road constitutes a portion of the secondary system of state highways or is part of the road system of the locality in which it is located, industrial access funds may be used to upgrade the existing road only to the extent required to meet the needs of traffic generated by the new or expanding industrial facility. Additionally, where access to a qualified industrial site is via an existing road that can be determined inadequate for providing safe and efficient movement of the industrial traffic generated by the site or that this traffic conflicts with the surrounding road network to the extent that it poses a safety hazard to the general public, consideration may be given to funding additional improvements. Such projects must be requested by resolution of the local governing body and will be evaluated on case-by-case basis by the Secondary Roads Engineer. The District Traffic Engineer may be requested to evaluate and provide a recommendation on such requests.

When a project is established to improve an existing road to serve an eligible parcel having frontage on that road, industrial access funds will normally provide for improvements of the existing road to a point 100' past the point at which the parcel's nearest property line intersects the road. It is expected, however, that the improvement will extend to the proposed main entrance to the parcel and that the industry or the locality will provide whatever additional funds are required to improve the portion between 100' past the property line and the proposed entrance and any additional requested improvements. Requests for exceptions to this funding limitation will be directed to the State Secondary Roads Engineer.

E. Towns

Towns maintaining their own streets and receiving maintenance payments under §33.1-41.1 of the Code of Virginia shall be treated for purposes of this program as independent entities (for a list of these towns, see APPENDIX III).

Towns whose streets are maintained as a part of the secondary system of highways will be considered as part of their respective county; an allocation to such a town will be calculated as a portion of its county's \$300,000 annual unmatched limitation and will be subject to concurrence by resolution of the respective Board of Supervisors.

APPENDIX I
INDUSTRIAL SUBDIVISIONS
and the
INDUSTRIAL ACCESS PROGRAM

A. CREATING MARKETABLE INDUSTRIAL PARKS.

Division of land to create an industrial park should provide marketable industrial parcels; each parcel should be large enough to support quality industrial development and some future expansion of that development. Local and state agencies charged with the review of Industrial Access applications are encouraged to assist applicants in creating marketable industrial locations with good support facilities.

Many support facilities are needed for even a small industry; locating a new industrial park on more expensive land near existing facilities is often a better investment than building expensive roads, water lines, and other new support facilities to serve remote property which appears to be inexpensive or is simply available. Cheap land is often expensive to develop.

Support facilities to be considered in locating and developing industrial parks include water, sewer, waste disposal, communications systems (telephone, data transmission, microwave, satellite), energy sources (electricity, coal, oil, gas, gasoline, diesel oil), emergency services (police, fire, rescue, hazardous materials), and transportation (highway, rail, and air) for materials, products, clients, and employees. For larger industries, schools, housing, hospitals, churches, shopping, recreation, and other employee needs should be considered when selecting land for an industrial park.

B. INDUSTRIAL ACCESS FUNDING FOR SPECIFIC PARCELS.

1. In the XYZ Industrial Park (see Figure 2), requests for Industrial Access funding will be considered to serve qualifying industrial development on Lots 3, 4 or 5.
2. Within funding limitations set forth on page 12 (see paragraph IV.A), full funding of the access road will be considered if there is sufficient qualifying industrial investment on Lot 5. A proportionate share will be considered on lots requiring only a portion of the access road constructed
3. If Lot 3 is the first off-highway road parcel to be used for a qualifying industrial establishment, funding will be considered for building the access road only as far as required to allow construction of an entrance to serve the qualifying lot (point A). This point will be set at the nearest property line of the qualifying lot, or if necessary to provide frontage for an entrance, not to exceed 100 feet beyond the nearest edge of the property. The road will not be extended to enhance on-site development or to reduce entrance costs.

If desired, and if within funding limitations, the road may be completed to the cul-de-sac in one of two ways:

- (a) it may be constructed simultaneously with, and as an extension of, the access road to Lot 3 if the additional cost of the road to serve Lots 4 and 5 is bonded or paid for by the locality, or
- (b) the road may be constructed only to point A as an initial project, and a subsequent allocation will be considered when qualifying industrial development of Lot 4 or 5 occurs.

4. Lots 1 and 2, because they abut a public street, already have access and development on these parcels will not qualify for Industrial Access funding to construct a new access road (see page 1, paragraph II.B). Extreme topography that makes an entrance for such a lot difficult or expensive is not a justification for use of state funds to provide access to the lot.

5. Where the existing street or highway is inadequate for increased industrial traffic, qualifying capital investment on any parcel may qualify for industrial access funds to improve the existing public road (see page 13, paragraph D). However, turn lanes, signal lights or crossover improvements are not usually warranted as stand-alone projects and no primary highway may be improved with these funds.

C. CREDIT FOR A BONDED PROJECT.

For a bonded project with no initial industry and where the entire access road was constructed under bond, then sufficient qualifying capital investment on Lot 5 within the five-year bond period will satisfy the entire bond. Partial credit will be given for such investment on Lots 3 and 4. No credit will be given for such investment on Lots 1 or 2.

D. COMBINING CAPITAL INVESTMENTS ON TWO OR MORE SITES.

It is possible to combine the capital investments of industries located on two or more eligible parcels in order to justify the cost of one access road that serves all of the industries involved. The process is much more cumbersome and uncertain than working with one industry, and the road project may only be authorized for construction after the last industry is under contract. This would result in the earlier industry or industries going into production without adequate access, and is not recommended.

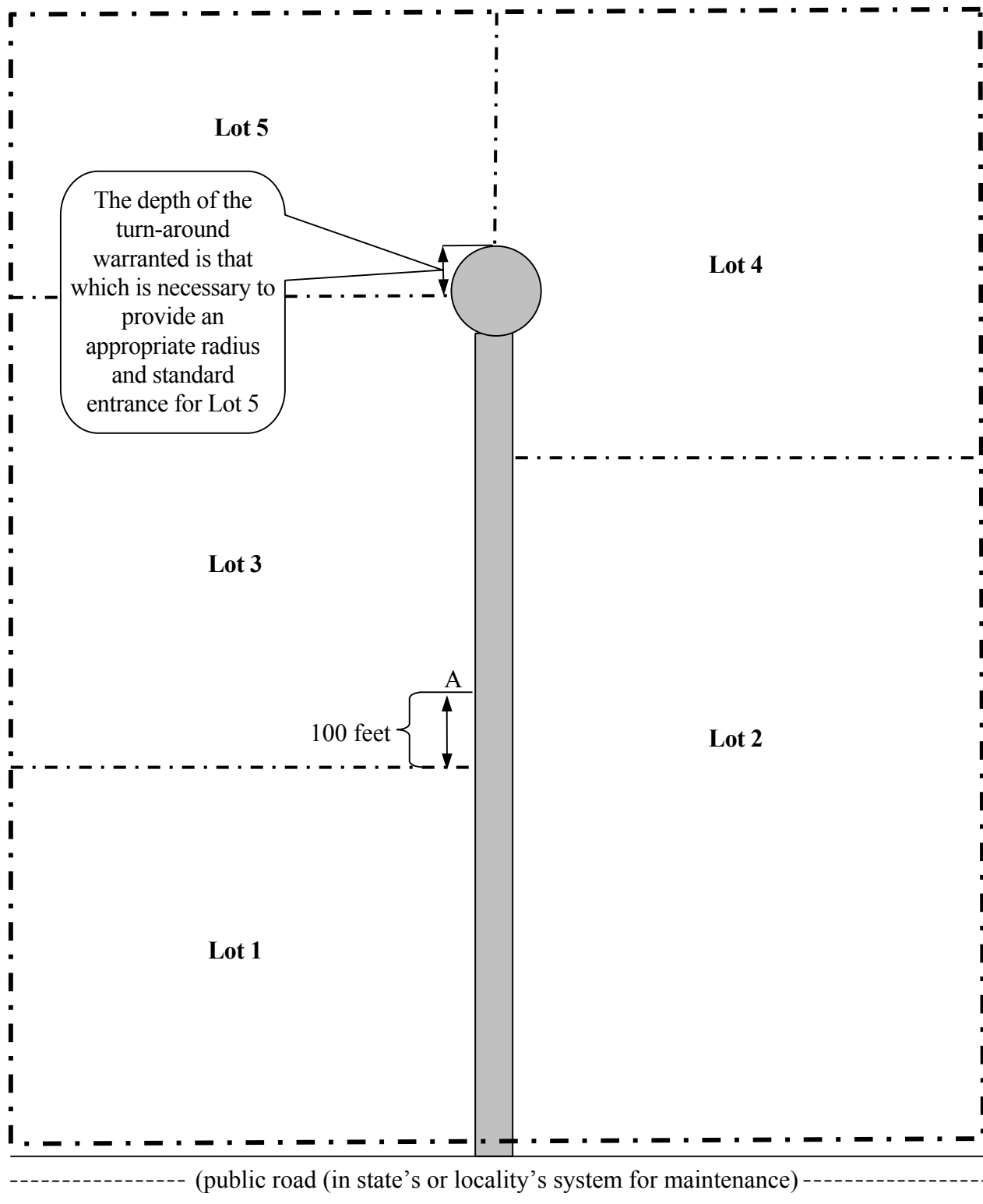


Figure 2
INDUSTRIAL PARK DEVELOPMENT (XYZ Industrial Park)

APPENDIX II. A
SAMPLE RESOLUTION – REGULAR PROJECTS
[The industry exists or is under firm contract]

At a regularly scheduled meeting of the [City/Town Council] of [name of locality (or, if applicable) [(name of county) and “County Board of Supervisors”]] held on [month & day], 20____, on a motion by [name of Council or Board member] [name of Council or Board member] [name of Council or Board member] [name of Council or Board member], seconded by [name of Council or Board member] [name of Council or Board member][name of Council or Council or Board member], the following resolution was adopted by a vote of [#]to [#]:

WHEREAS, the [full name of corporation or entity] has purchased property located in the [City/Town/County] of [name of city, town or county] [name of city, town or county] and [has entered or will enter] into a firm contract to [construct/expand] its facilities on that property for the purpose of producing [identify product]; and

WHEREAS, this new facility is expected to involve a new private capital investment in land, building, and manufacturing equipment of approximately \$[amount] and the [name of company] is expected to employ [###] persons at this facility; and

WHEREAS, manufacturing operations are expected to begin at this new facility on or about [month & day], 20____; and

FOR A NEW ROAD

WHEREAS, the property on which this facility (is/will be) located has no access to a public street or roadway and will require the construction of a new roadway which will connect to [name of road] (Route [#####]); and

WHEREAS, the (City/Town/County) of [city, town, or county name] hereby guarantees that the necessary environmental analysis, mitigation and right of way for this new roadway and utility relocation or adjustments, if necessary, will be provided at no cost to the Virginia Department of Transportation; and

FOR IMPROVEMENTS TO AN EXISTING ROAD

WHEREAS, the existing public road network does not provide for adequate access to this facility and it is deemed necessary that improvements be made to [name of road] (Route [#####]); and

WHEREAS, the [City/Town/County] of [city, town, or county name] hereby guarantees that the necessary environmental analysis, mitigation, and fee simple right of way for this improvement, and utility relocations or adjustments, if necessary, will be provided at no cost to the Industrial, Airport and Rail Access Fund; and

FOR A NEW ROAD OR AN EXISTING ROAD

WHEREAS, the [City/Town/County] of [city, town or county name] acknowledges that the State Environmental Review Process (SERP) must be completed prior to any construction activity on this project as a condition of the use of the Industrial, Airport and Rail Access Fund; and

WHEREAS, the [City/Town/County] of [city, town or county name] of hereby guarantees that all ineligible project costs and any other costs not justified by eligible capital outlay will be provided from sources other than those administered by the Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED THAT: The [City/Town Council] of [name of locality] (or, if applicable [name of county] and "County Board of Supervisors") hereby requests that the Commonwealth Transportation Board provide financing from the Industrial, Airport and Rail Access Fund to provide an adequate road to this new manufacturing facility; [and]

FOR A NEW ROAD ONLY

BE IT FURTHER RESOLVED THAT: The [City/Town Council] of [name of locality] (or, if applicable [name of county] and "County Board of Supervisors") hereby agrees that the new roadway so constructed will be added to and become a part of the road system of the (City/Town of [name of locality] maintaining its own road system) (or, [Secondary System of Highways], if locality does not maintain its own road system)).

(SEAL)

A COPY TESTE: _____
[signature of official]
[Chairman/Mayor]

Note:

In the BE IT FURTHER RESOLVED paragraph, any locality which maintains its own street system will indicate that it will accept and maintain the new roadway. In all counties except Arlington and Henrico, in the former Nansemond County portion of the City of Suffolk, and in all towns which do not maintain their own streets, new roadways constructed under the Industrial Access Program will become part of the Secondary System of Highways.

Where road costs are expected to exceed an amount equal to one-tenth of the qualifying capital investment by an industry, see "Funding Limitations" on Page 5, section III.B.1.

APPENDIX II. B
SAMPLE RESOLUTION – BONDED PROJECT
[No (or insufficient) qualifying investment]

At a regularly scheduled meeting of the [City/Town Council] of [name of locality] (or, if applicable, [name of county] and [“County Board of Supervisors”] held on [month & day] 20____, on a motion by [name of Council or Board member], seconded by [name of Council or Board member], the following resolution was adopted by a vote of [#] to[#]:

WHEREAS, the [full name of Industrial Authority, local government, or regional agency] desires to facilitate the industrial development of property located in [City/Town/County] of [locality name]; and

WHEREAS, this property is expected to be the site of new private capital investment in land, building, and manufacturing equipment which will provide substantial employment; and

FOR A NEW ROAD

WHEREAS, the subject property has no access to a public street or roadway and will require the construction of a new roadway which will connect to [name of road] (Route [####]); and

WHEREAS, the [City/Town/County] of [city, town or county name] hereby guarantees that the necessary environmental analysis, mitigation and right of way for this new roadway and utility relocation or adjustments, if necessary, will be provided at no cost to the Virginia Department of Transportation; and

FOR IMPROVEMENTS TO AN EXISTING ROAD

WHEREAS, the existing public road network does not provide for adequate access to this property and it is deemed necessary that improvements be made to [name of road] (Route [####]); and

WHEREAS, the [City/Town/County] of [city, town or county name] hereby guarantees that the necessary environmental analysis, mitigation, and fee simple right of way for this improvement and utility relocations or adjustments, if necessary, will be provided at no cost to the Industrial, Airport and Rail Access Fund; and

FOR A NEW ROAD OR AN EXISTING ROAD

WHEREAS, the [City/Town/County] of [city, town or county name] acknowledges that the State Environmental Review Process (SERP) must be completed prior to any construction activity on this project as a condition of the use of the Industrial, Airport and Rail Access Fund.

WHEREAS, the [City/Town/County] of [city, town or county name] hereby guarantees that all ineligible project costs and any other costs not justified by eligible capital outlay will be provided from sources other than those administered by the Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED THAT: The [City/Town Council of [city or town name] (or, if applicable, [name of county] and [“County Board of Supervisors”]) hereby

requests that the Commonwealth Transportation Board provide financing from the Industrial, Airport and Rail Access Fund to provide an adequate road to this property; and

BE IT FURTHER RESOLVED THAT: The [City/Town/County] of [city, town or county name] hereby agrees to provide a surety or bond, acceptable to and payable to the Virginia Department of Transportation, in the full amount of the cost of the road; this surety shall be exercised by the Department of Transportation in the event that sufficient qualifying capital investment does not occur on parcel(s) [identify parcel(s) (e.g., Lot #, Parcel #)] within five years of the Commonwealth Transportation Board's allocation of funds pursuant to this request.

FOR A NEW ROAD ONLY

BE IT FURTHER RESOLVED THAT: The [City/Town Council of] [name of locality] (or, if applicable [name of county]) and ["County Board of Supervisors"]) hereby agrees that the new roadway so constructed will be added to and become a part of the road system of the [City/Town of name of locality] (or, [Secondary System of Highways], if locality does not maintain its own road system)].

(SEAL)

A COPY TESTE: _____
[signature of official]
[Chairman/Mayor]

Note:

In the second BE IT FURTHER RESOLVED paragraph, any locality which maintains its own street system will indicate that it will accept and maintain the new roadway. In all counties except Arlington and Henrico, in the former Nansemond County portion of the City of Suffolk, and in all towns which do not maintain their own streets, new roadways constructed under the Industrial Access Program will become part of the Secondary System of Highways.

APPENDIX III
TOWNS MAINTAINING OWN STREETS

Under §33.1-41.1, Code of Virginia
(As of July 1, 2001)

Abingdon	Luray
Altavista	Marion
Ashland	Narrows
Big Stone Gap	Orange
Blacksburg	Pearisburg
Blackstone	Pulaski
Bluefield	Richlands
Bridgewater	Rocky Mount
Chase City	Saltville
Chincoteague	Smithfield
Christiansburg	South Boston
Clifton Forge	South Hill
Culpeper	Strasburg
Dumfries	Tazewell
Elkton	Vienna
Farmville	Vinton
Front Royal	Warrenton
Grottoes	Wise
Herndon	Woodstock
Lebanon	Wytheville
Leesburg	

APPENDIX IV
STATUTORY AUTHORITY

Code of Virginia

§ 33.1-221. Funds for access roads to industrial sites and airports; construction, maintenance, etc., of such roads.

A. Notwithstanding any other provision of law, there shall be appropriated to the Commonwealth Transportation Board funds derived from taxes on motor fuels, fees and charges on motor vehicle registrations, road taxes or any other state revenue allocated for highway purposes, which shall be used by the Board for the purposes hereinafter specified, after deducting the costs of administration before any of such funds are distributed and allocated for any road or street purposes.

Such funds shall be expended by the Board for constructing, reconstructing, maintaining or improving access roads within counties, cities and towns to industrial sites on which manufacturing, processing or other establishments will be built under firm contract or are already constructed and to licensed, public-use airports; in the event there is no such establishment or airport already constructed or for which the construction is under firm contract, a county, city, or town may guarantee to the Board by bond or other acceptable device that such will occur and, should no establishment or airport acceptable to the Board be constructed or under firm contract within the time limits of the bond, such bond shall be forfeited. Towns, which receive highway maintenance payments under § 33.1-41.1, shall be considered separately from the counties in which they are located when receiving allocations of funds for access roads.

B. In deciding whether or not to construct or improve any such access road, and in determining the nature of the road to be constructed, the Board shall base its considerations on the cost thereof in relation to the volume and nature of the traffic to be generated as a result of developing the airport or the industrial establishment within the total industrial area. In any industrial park or airport, the total volume of traffic to be generated shall be taken into consideration in regard to the overall cost thereof. No such access road shall be constructed or improved on a privately owned plant site.

C. Any access road constructed or improved under this section shall constitute a part of the secondary system of state highways or the road system of the locality in which it is located and shall thereafter be constructed, reconstructed, maintained and improved as other roads in such system.

(Code 1950, § 33-136.1; 1956, c. 161; 1962, c. 550; 1964, c. 254; 1970, c. 322; 1978, c. 299; 1980, c. 38; 1989, c. 336; 1996, cc. 85, 128; 1997, c. 89.)

APPENDIX V

**RESOLUTION
OF THE
COMMONWEALTH TRANSPORTATION BOARD**

February 15, 2001

MOTION

Made By: Mr. Grubb Seconded By: Ms. Welsh Action: Motion Carried

**Title: Industrial Access Policy
(Revision)**

WHEREAS, the General Assembly has from time to time amended Section 33.1-221 of the Code of Virginia (1950) relating to the fund for the construction of industrial access roads within the counties, cities and towns of the Commonwealth; and

WHEREAS, it is the sense of this Board that its present policy should be revised and restated to be more compatible with present conditions.

NOW, THEREFORE, BE IT RESOLVED that the Commonwealth Transportation Board hereby adopts the following policy to govern the use of industrial access funds pursuant to Section 33.1-221, as amended, of the Code of Virginia (1950):

1. The use of industrial access funds shall be limited to: (1) providing adequate access to new or substantially expanding manufacturing, processing and industrial facilities, or other establishments; and (2) improving existing roads that may not be adequate to serve new industry or substantially expanding manufacturing, processing and industrial facilities, or other establishments.
2. Industrial access funds shall not be used for the acquisition of rights of way or adjustment of utilities. These funds are to be used only for the actual construction and engineering of a road facility adequate to serve the traffic generated by the new or expanding establishments.

3. Industrial access funds may not be used for the construction of access roads to schools, hospitals, libraries, airports, armories, speculative office buildings, shopping centers, apartment buildings, professional offices, residential developments, churches, hotels, motels, government installations, or similar facilities, whether public or private. (Access roads to licensed, public-use airports, while provided for in Section 33.1-221, are funded and administered separately).
4. No cost incurred prior to this Board's approval of an allocation from the industrial access funds may be reimbursed by such funds. Industrial access funds shall be authorized only after certification that the manufacturing, processing or other establishment will be built under firm contract, or is already constructed, or upon presentation of acceptable surety in accordance with paragraph (a) of Section 33.1-221, as amended, of the Code of Virginia (1950).
5. When an eligible establishment is not yet constructed or under firm contract and a local governing body guarantees by bond or other acceptable surety that such will occur, the maximum time limit for such bond shall be five years, beginning on the date of the allocation of the industrial access funds by the Commonwealth Transportation Board. At the end of the five-year period, the amount of industrial access funds expended on the project and not justified by eligible capital outlay of one or more establishments acceptable to the Board shall be reimbursed to the Department of Transportation by forfeiture of the surety. The bonded period for projects approved between March 21, 1996, and July 1, 1999, shall be extended for a period of two additional years beyond their original expiration dates, contingent upon the affected locality providing acceptable surety for the extended period.
6. Industrial access funds shall not be used to construct or improve roads on a privately owned plant site. Nor shall the construction of a new access road to serve any industrial site on a parcel of land which abuts a road constituting a part of the systems of state highways or the road system of the locality in which it is located be eligible for industrial access funds, unless the existing road is a limited access highway and no other access exists. Further, where the existing road is part of the road system of the locality in which it is located, or the secondary system of state highways, industrial access funds may be used to upgrade the existing road only to the extent required to meet the needs of traffic generated by the new or expanding industrial facility.

In the event an industrial site has access according to the foregoing provisions of this policy, but it can be determined that such access is not adequate in that it does not provide for safe and efficient movement of the industrial traffic generated by the industry on the site or that the site's traffic conflicts with the surrounding road network to the extent that it poses a safety hazard to the general public, consideration will be given to funding additional improvements. Such projects shall be evaluated on a case-by-case basis upon request, by resolution, from the local governing body. Localities are encouraged to establish planning policies which will discourage

incompatible mixes such as industrial and residential traffic.

7. Not more than \$300,000 of unmatched industrial access funds may be allocated in any fiscal year for use in any county, city or town which receives highway maintenance payments under Section 33.1-41.1, Code of Virginia. A town whose streets are maintained under either Section 33.1-79 or 33.1-82, Code of Virginia, shall be considered as part of the county in which it is located. The maximum eligibility of unmatched funds shall be limited to 10% of the capital outlay of the designated industry or industries. The unmatched eligibility may be supplemented with additional industrial access funds, in which case the supplemental access funds shall not be more than \$150,000, to be matched dollar-for-dollar from funds other than those administered by this Board. The supplemental industrial access funds over and above the unmatched eligibility shall be limited to 5% of the capital outlay of the designated industry or industries. Such supplemental funds shall be considered only if the total estimated cost of eligible items for the individual access improvement exceeds \$300,000.

If an eligible site is owned by a regional industrial facility authority, as defined in §15.2-6400 et seq. of the Code of Virginia, funds may be allocated for construction of an access road project to that site without penalty to the jurisdiction in which the site is located. This provision may be applied to one regional project per fiscal year in any jurisdiction, with the same funding limitations as prescribed for other individual projects.

8. Eligible items of construction and engineering shall be limited to those which are essential to providing an adequate facility to serve the anticipated traffic. Items such as storm sewers, curb and gutter, and extra pavement width will not normally be eligible. However, additional pavement width may be eligible where necessary to qualify the road facility in a city or town for maintenance payments under Section 33.1-41.1, as amended, of the Code of Virginia.

9. It is the intent of the Board that industrial access funds not be anticipated from year to year. Unused eligibility cannot be allowed to accumulate and be carried forward from one fiscal year to another.

10. The Commonwealth Transportation Board will consult and work closely with the Department of Business Assistance in determining the use of industrial access funds and may rely on the recommendations of this Department in making decisions as to the allocation of these funds. In making its recommendations to this Board, the Department of Business Assistance will take into consideration the impact of the proposed facility on the employment and tax base of both the area in which the facility is to be located and the Commonwealth of Virginia. The determination by the Department of Business Assistance that the subject establishment impacts the economic growth of the Commonwealth to such an extent that an allocation should be made regardless of the manufacturing or distributive classification will be given considerable weight by this Board.

11. Prior to the formal request for the use of industrial access funds to provide access to new or expanding industries, the location of the access road shall be submitted for approval of the engineers of the Virginia Department of Transportation. The engineers shall take into consideration the cost of the facility as it relates to the location and as it relates to the possibility of the future extension of the road to serve other possible industrial establishments, as well as the future development of the area traversed.

12. Prior to this Board's allocation of funds for such construction or road improvements to an industry proposing to locate or expand in a county, city or town, the governing body shall by resolution request the access funds and shall be responsible for the preliminary negotiations with the industries and others interested. Engineers of the Virginia Department of Transportation will be available for consultation with the governing bodies and others, and may prepare surveys, plans, engineering studies, and cost estimates.

13. The Commonwealth Transportation Commissioner is directed to establish administrative procedures to assure the provisions of this policy and legislative directives are adhered to and complied with.

BE IT FURTHER RESOLVED that the above policy shall become effective immediately, and all policies heretofore adopted by this Board governing the use of industrial access funds shall be rescinded simultaneously.

###

APPENDIX VI
Acknowledgment of the Virginia Department of Transportation's
State Environmental Review Process Requirement for Projects Utilizing VDOT Funding

*This acknowledgement should accompany all requests by localities for state funding for
Access Road Program projects*

As a representative for the City/ Town/ County of _____, my signature below indicates this locality's understanding of the following:

- The State Environmental Review Process (SERP) is a product of the Code of Virginia § 10.1-1188 and a subsequent agreement entered into by the Secretaries of Transportation and Natural Resources to provide for the environmental review of state funded projects prior to construction.
- This 60-120 day process is accomplished by VDOT based upon information provided by local government and must be completed prior to construction and the actual distribution of the funds authorized by the Commonwealth Transportation Board (CTB).
- The locality will provide the VDOT Resident Engineer or representative with specific information on construction activities for the subject project to be funded by Special Funding Programs from VDOT's Secondary Roads Division.
- The locality will also provide the VDOT Resident Engineer or representative with the results of any environmental reviews previously performed on the project area relative to the subject project.
- The locality will not begin construction activities within the access roadway until receiving written notification from the VDOT Resident Engineer or representative of the completion of the SERP, along with details regarding the environmental commitments that remain outstanding.
- The locality will not permit access road project construction activities to occur within the area of the access roadway project until an agreement between the Department and the locality has been fully executed.
- The locality is responsible for seeing that all outstanding environmental commitments are completed or addressed satisfactorily prior to construction. The Department reserves the right to refuse reimbursement of costs associated with this Industrial Access project should the locality neglect to comply with responsibilities assumed by engaging in any activity which may impact the project.
- Should any land disturbance activities associated with the access road project occur within the project area prior to the completion of the SERP and satisfaction of associated outstanding environmental commitments, the project will no longer be considered eligible for funding approved by the CTB for this project.

Project Name/ Description: _____

Name: _____

Title: _____

City/ Town/ County: _____

Signature: _____

Date: _____

APPENDIX VII
Environmental Process for State-Funded Projects

The following general requirements pertain to all state-funded projects. Regardless of funding, the State Environmental Review Process (SERP) must be completed prior to advertisement and land disturbance in order to satisfy the requirements of the Code of Virginia 10.1-1188 (b). If the Locality agrees to assume responsibility for environmental studies, the following items establish the general responsibilities of the parties under this agreement:

A. The Department will:

1. Process the project through the SERP. Upon receipt of the completed Early Notification form (EQ-429) from the Locality, the Resident Engineer and/or Urban Division will submit the form to the District Environmental Section for processing through the SERP.
2. Provide the results of the SERP to the Resident Engineer and/or Urban Division, who will forward the results to the Locality.
3. Identify a VDOT representative for environmental decisions.
4. Confirm, with Locality assistance, compliance with all environmental commitments before, during, and after construction.

B. The Locality will:

1. Submit the completed Early Notification form (EQ-429) and any other necessary information to the Resident Engineer and/or Urban Division regarding the scope of the proposed project.
2. Meet with Department personnel (and other agency personnel at the Department's discretion) to scope the project and discuss the procedures by which the environmental commitments will be fulfilled by either the Department or the Locality. Scoping will include discussion of:
 - a. Description of the proposed action;
 - b. Certification that the project is included in any necessary planning documents (i.e., Transportation Improvement Plan (TIP), Constrained Long Range Plan (CLRP), Secondary Roads Six-Year Plan);
 - c. Project schedule;
 - d. Water quality permits;
 - e. Appropriate VDOT, Locality and agency contacts;
 - f. Required technical studies.
3. Provide qualified staff to manage the environmental process.
4. Provide the Department an opportunity to review and approve the consultant to perform the environmental studies required as a result of the SERP.
5. Provide the Department an opportunity to review and approve the environmental scope of work for any technical studies.
6. Provide all requests to VDOT for technical and coordination assistance from Locality staff and not from the Locality's consultant.

7. Ensure that results of the SERP are considered in the location and design decisions for the project.
8. Provide a letter of certification when the project is submitted for Plans, Specifications, and Estimates (PS&E) approval that the project description has not changed since completion of the SERP, or if any changes have occurred submit a revised Early Notification form (EQ-429) to the Department for consideration and additional coordination with state agencies.
9. Identify control measures to ensure compliance during construction with environmental commitments.
10. If the Locality constructs the project, ensure and certify that all environmental commitments have been achieved, before, during and after construction, that all necessary permits have been obtained, and that all conditions of local, state, and federal erosion and sedimentation (E&S) and storm water related ordinances, laws, and regulations have been satisfied.

APPENDIX VIII. A
IRREVOCABLE STANDBY LETTER OF CREDIT

Beneficiary:
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

Date: _____
Amount US Dollars: _____


Applicant:
[enter name of City/Town/County] _____
[enter address] _____
[enter City, State and zip code] _____

Letter of Credit # _____
Expiration Date: _____

Dear Sirs:



We hereby issue this irrevocable standby letter of credit in your favor available by your draft(s) up to the aggregate amount of [enter written amount] US Dollars ([enter dollar amount] drawn on us at sight accompanied by the following document:

Beneficiary's signed statement certifying that "The drawing is for reimbursement  the Virginia Department of Transportation for costs incurred in the construction of the industrial access road, Project [enter state number assigned to project] to and within the [enter name of industrial park development] in the [enter name of City/Town/County of (locality name)] Virginia. Said reimbursement is pursuant to the Commonwealth Transportation Board's resolution of [enter CTB resolution date, [if applicable, include "and the local-state agreement dated (date of agreement), requiring that eligible industry be constructed or under firm contract no later than [enter date].

Partial drawings are permitted.

Each draft drawn relative hereto must be marked: "Drawn under [enter name of institution providing surety] Letter of Credit # _____," and be accompanied by this original letter of credit.

This irrevocable standby letter of credit sets forth in full the terms of our undertaking. This undertaking shall not in any way be modified, amended or amplified by reference to any documents or contracts referred to herein.

We hereby agree to honor each draft drawn under and in compliance with the terms of this credit, if duly presented (together with the documents as specified) at our office at [enter address of institution providing surety], on or before the expiration date hereof.

This credit is subject to the "Uniform Customs and Practice for Documentary Credits" (1993 Revision), International Chamber of Commerce Publication No. 500.

Authorized Signature

Title

APPENDIX VIII. B
SURETY BOND

Bond Number: _____

KNOW ALL MEN BY THESE PRESENTS, THAT the [enter name of city/town/county, Virginia, as Principal, and [enter name of financial backing institution], as Surety, are held and firmly bound unto the Virginia Department of Transportation, as obligee, in the full sum of [enter written amount of surety necessary] Dollars ([enter currency amount]) lawful money of the United States of America, for payment whereof well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Signed, sealed, and dated this _____ day of _____, 20 ____.

WHEREAS, the Virginia Department of Transportation, through the Commonwealth Transportation Board, has allocated ([enter amount of CTB allocation]) in Industrial Access Program funds for the [enter name of industrial park], located [enter location (e.g., “off Route [###], north/south/east/west of ...”)], in [enter name of city/town/county, Virginia, Project [enter state project #], to assist in providing access to the proposed industrial park.

NOW, THEREFORE, the condition of the above obligation is such that the [enter City/Town/County of (locality name)] shall reimburse the Virginia Department of Transportation for any expenses incurred by the Industrial Access Program fund for that part of this project’s construction not justified by the eligible capital outlay of eligible industry served by the project, as of [enter date of expiration (5 years after date of CTB allocation)] [enter date of expiration (5 years after date of CTB allocation)], pursuant to the contingency #____ of the Commonwealth Transportation Board’s resolution of [enter date of CTB allocation] enter date of CTB allocation], then this obligation to be void and of no effect; otherwise to be and remain in full force and virtue.

Attest: _____

Principal: _____

By: _____

Attest: _____

Surety: _____

By: _____

APPENDIX VIII. C
PLEDGE AND ASSIGNMENT OF DEPOSITS

1. For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the County/City/Town of _____ (hereinafter referred to as “Debtor”) pledges, assigns, and grants this _____ day of _____, 20____, to the Commonwealth of Virginia, Department of Transportation (“VDOT”) a security interest in all of the Debtor’s right, title and interest in and to the following:

Certificate of Deposit Number _____, dated _____, 20____, in the principal amount of \$ _____ issued by or maintained with _____ (the “Financial Institution”), (“the Deposits”), to secure the payment and performance of the Obligations (hereinafter defined).

2. **WITHDRAWALS:** Unless and until the VDOT notifies the Financial Institution in writing that this Pledge and Assignment of Deposits (the “Pledge and Assignment”) has been terminated, the Debtor agrees that THE FINANCIAL INSTITUTION SHALL NOT PERMIT WITHDRAWALS OF THE DEPOSIT WITHOUT THE WRITTEN AUTHORIZATION OF VDOT. In permitting such withdrawals, the Financial Institution may conclusively rely on a withdrawal order signed by the Resident Engineer of the VDOT Residency Office in _____, Virginia. VDOT is entitled to enforce its rights hereunder without regard to any resulting imposition of withdrawal penalties or other charges by the Financial Institution against the Debtor. The Debtor alone shall remain liable to the Financial Institution for any withdrawal penalties or other charges.
3. **OBLIGATIONS:** The following obligations (“Obligations”) are secured by this Pledge and Assignment: a qualifying industrial investment in the [name of industrial park development] within 5 (five) years of the date of the Industrial Access allocation approved by the Commonwealth Transportation Board by resolution dated _____, 20____, for State Project _____ - _____ - _____, _____ along the portion of the road heretofore constructed identified as [road name]. If only partial qualifying investment occurs on an appropriate site[s] with the time limit set herein, proportional credit against this pledge will be made for that partial investment. These Obligations shall be governed by such rules, regulation, and guidelines to the VDOT Industrial Access Roads Program as they exist on the date of this pledge.
4. **WARRANTIES:** The Debtor represents, warrants and covenants that (a) the Debtor is the owner of the Deposits and has authority to execute and deliver this Pledge and Assignment; (b) the Deposits are not subject to any liens or offsets of any person, firm or corporation other than VDOT; (c) it has not made and will not make, any pledge, assignment or transfer of the Deposits except to VDOT; (d) it has not withdrawn, canceled, been repaid or redeemed all or any part of the Deposits, nor is there any pending application to do so; (e) it shall not, so long as any Obligations are outstanding, assign, transfer, withdraw, cancel, redeem or seek repayment of the Deposits; (f) it shall, immediately upon VDOT’s request, execute and deliver such further instruments and documents, and take all such other action,

as VDOT deems necessary or desirable, to further evidence and perfect this assignment, pledge and grant of security; (g) it shall promptly notify VDOT of any claim, action or proceeding affecting title to the Deposits, or any part thereof, or the security interest herein, and, at the request of VDOT, appear in and defend any such action or proceeding; and, (h) the Debtor authorizes VDOT to notify any issuer or depository of the Deposits of VDOT's interest therein.

5. DEFAULT: In the event of any default in the performance of the Obligations, the Debtor irrevocably authorizes the VDOT to demand, withdraw and receive from the financial institution and all funds and deposits comprising the Deposits, at such times and in such amounts as VDOT in its sole discretion shall determine. Such demand shall be comprised of a written statement of VDOT that the Deposits are at the time of such demand assigned as a security interest pursuant to this Pledge and Assignment of Deposits, and that VDOT is entitled to payment of the Obligations from such funds. Debtor agrees to hold the financial institution harmless in relying upon such written statement of VDOT, and confirms that any payments by the Financial Institution to VDOT pursuant to such demand shall, to the extent thereof, satisfy any obligation of the Financial Institution with respect to the Deposits and be a full and complete release, discharge and acquaintance for the Financial Institution making such payment to the extent of the amounts so paid. Upon receipt of the funds, VDOT may, in its discretion either (a) hold such funds or any portion thereof subject to the terms of this agreement, or (b) apply such funds or any portion thereof to the Obligations in such order and manner as VDOT may elect.
6. This Pledge and Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Pledge and Assignment shall remain in full force and effect unless and until all of the Obligations have been fully satisfied. The terms and conditions hereof cannot be limited or amended without VDOT's written consent.

County/City/Town of _____

BY: _____

TITLE _____

STATE OF _____

COUNTY/CITY OF _____, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____.

My commission expires: _____

Notary Public

STATE OF _____

VIRGINIA DEPARTMENT OF
TRANSPORTATION

BY: _____

TITLE: _____

DATE: _____

ACKNOWLEDGED:

[name of financial institution]

BY: _____

TITLE: _____

DATE: _____

APPENDIX VIII. D
ESCROW AGREEMENT

THIS ESCROW AGREEMENT, ("Escrow Agreement") made and entered into as of the ____ day of _____, 20____, among the Virginia Department of Transportation ("VDOT"), the CITY/TOWN/COUNTY OF _____, VIRGINIA, a body corporate and politic (the "City" / "Town" / "County"), and _____ (the "Escrow Agent") recites and provides:

WITNESSETH:

The County/City/Town and VDOT entered into an agreement dated _____, relating to the construction and funding of an industrial access road in the _____ (the "Agreement").

Paragraph designated _____ of the Agreement requires surety, not to exceed \$_____, be given by the County to VDOT for reimbursement of costs incurred in the construction of the industrial access road, VDOT Project No. ____ - ____ - ____, ("Industrial Access Project").

The City/Town/County, VDOT and Escrow Agent desire to evidence their agreement with respect to the holding, investment, and disbursement of the funds to be held in escrow.

NOW THEREFORE, in consideration of the covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency whereof are acknowledged, the parties hereunto do hereby agree as follows:

1. **Escrow Fund Investment.** The City/Town/County shall, prior to payment by VDOT pursuant to the Agreement, deposited with the Escrow Agent an equal sum of money in cash ("Escrow Fund"). The Escrow Agent agrees to hold, invest and disburse the Escrow Fund only in accordance with this Escrow Agreement. The Escrow Agent is hereby authorized and directed to invest the Escrow Fund in the name of the County/Town/City in any investment vehicle, insured or backed by government securities, as reasonably permitted by law. The Escrow Fund shall remain the property of the County/Town/City unless and until such time as the Escrow Fund becomes due and payable pursuant to the terms of this Escrow Agreement. All interest or other return (the "Interest") earned by the investment of the Escrow Fund shall be the property of the County/Town/City or VDOT, the Escrow Agent shall provide information regarding the investment status of the Escrow Fund. The initial principal balance of the Escrow Fund shall not be jeopardized, but in any event should the amount of the Escrow Fund drop below \$_____, unless authorized by this Escrow Agreement and the Agreement, the County/Town/City shall promptly pay Escrow Agent a sufficient amount to restore the balance to no less than \$_____.

2. **Disbursement of Escrow Fund to VDOT.** Upon written request by VDOT after _____, 20____, the Escrow Agent shall pay to VDOT all or a portion of the Escrow Fund necessary to reimburse VDOT for expenses incurred in construction of the Industrial Access Road not offset by eligible industrial capital outlay by eligible industry (ies) as determined under VDOT's usual policy and practices for administering the Industrial Access Fund, based on documentary

evidence submitted by the County/Town/City.

3. Disbursement of the Escrow Fund to County/Town/City.

a. Upon written request by VDOT, the Escrow Agent shall pay to the County/Town/City all or a portion of the Escrow Fund for which the County/Town/City is entitled to a credit for eligible industrial capital outlay by eligible industry (ies) along the Industrial Access Road. The amount to be credited to the County/Town/City shall be determined by VDOT using its usual policy and practice for administering the Industrial Access Fund, based on documentary evidence submitted by the County/Town/City.

b. After payment to VDOT under paragraph numbered 2 or in any event after _____, 20____, the Escrow Agent shall pay the County/Town/City the remaining amount of the Escrow Fund.

4. Escrow Agent. In order to induce the Escrow Agent to hold, invest, and disburse the Escrow Fund as required by this Escrow Agreement, VDOT and the County/Town/City do hereby agree that:

a. The Escrow Agent shall not be liable for any loss caused by the failure, suspension, bankruptcy or dissolution of any interest-bearing investment vehicle or fund in which the Escrow Fund is deposited.

b. The Escrow Agent shall not be liable for any loss or damage resulting from the following:

- (i) Any default, error, action or omission of any party, other than the Escrow Agent.
- (ii) The expiration of any time limit or other delay, unless such time limit was known to the Escrow Agent and the resulting loss was solely caused by failure of the Escrow Agent to proceed in accordance herewith.
- (iii) Lack of authenticity, sufficiency or effectiveness of any documents delivered to it and lack of genuineness of any signature or authority of any person to sign any such document.
- (iv) Compliance by the Escrow Agent with any and all legal process, writs, orders, judgments and decrees of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.
- (v) The Escrow Agent's assertion or failure to assert any cause of action or defense in any judicial, administrative or other proceeding either in its own interest or in the interest of any party or parties.

c. The County/Town/City hereby agrees to pay the Escrow Agent for all its

expenses, costs, and reasonable attorney's fees incurred in connection with any interpleader action which Escrow Agent may file, in its sole discretion, to resolve any dispute; or which may be filed against the Escrow Agent. Such costs, expenses or attorney's fees, as well as the fees of the Escrow Agent described below, may be deducted from the Escrow Fund.

d. If the Escrow Agent is made a party to any judicial, non-judicial or administrative action, hearing or process based on acts of any of the other parties hereto and not on the malfeasance and/or negligence of the Escrow Agent in performing its duties hereunder, the expenses, costs and reasonable attorney fees incurred by the Escrow Agent in responding to such action, hearing or process may be deducted from the Escrow Fund and the party/parties whose alleged acts are a basis for such proceedings shall save and hold the Escrow Agent harmless from said expenses, costs and fees so incurred.

Notwithstanding the foregoing, nothing shall be deemed to relieve the Escrow Agent from liability hereunder arising out of its gross negligence, willful or deliberate acts, fraud, embezzlement, or misappropriation.

e. The County/Town/City and VDOT shall have the right to remove the Escrow Agent and appoint a new escrow agent by written notice signed by both the County/Town/City and VDOT and sent to the Escrow Agent.

5. **Successors and Assigns.** This Escrow Agreement shall insure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns. This Escrow Agreement is made and intended as a Virginia contract and shall be so constructed.

6. **Capitalized Terms.** Capitalized terms not expressly defined herein shall have the same meaning set forth in the Agreement.

7. **Completeness and Modification.** This Escrow Agreement constitutes the entire agreement between the parties hereto as to the transactions contemplated hereby and supersedes all prior discussions, understanding or agreements between the parties hereto.

8. **Counterparts.** To facilitate execution, this Escrow Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of all parties hereto appear on each counterpart hereof, and it shall be sufficient that the signature on behalf of each party hereto appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement.

9. **Notices.** Any notice to the parties hereunder shall be sent to the following addresses unless the parties are given written notice of a change of address.

If to
VDOT

Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219
Attention: James S. Givens
Telecopier: (804) 786-2603

If to
the Locality:

[County/ /Town/City] of [locality name], Virginia
[mailing address of locality]
[city], Virginia [Zip Code]
Attention: [locality representative]
Telecopier: [_____]

If to Escrow
Agent:

[Escrow Agent's name], [Title]
[mailing address]
[city], Virginia [Zip Code]

IN WITNESSED WHEREOF, the parties hereby have executed this Agreement under seal,
as of the date first above written.

VDOT:

Virginia Department of Transportation

By _____
Its _____

COUNTY/CITY/TOWN:

[COUNTY/CITY/TOWN] OF _____,
VIRGINIA, a body corporate and politic

By _____
Its _____

ESCROW AGENT:

APPENDIX IX
Virginia Department of Transportation
Industrial Access Program
Outline/Checklist

The purpose of the Industrial Access Program is to assist localities in providing adequate access to new or expanding industrial development sites. Adequate access, in consideration of the type and volume of traffic to be generated by the subject site, may require the construction of a new roadway, improvement of an existing roadway, or both to serve the qualifying development. The program is administered by VDOT under the authority of § 33.1-221 of the Code of Virginia.

FUNDING LIMITATIONS

These funds may be requested by the local form of government of counties, cities, and certain towns that receive highway maintenance payments under § 33.1-41.1 of the Code of Virginia.

The maximum unmatched allocation within any one fiscal year is \$300,000. A supplement of up to \$150,000 is available upon locality's match (dollar for dollar). Funding is dependent on the estimated cost of eligible portion of access road and anticipated eligible capital investment of sites served.

- ☐ Such supplemental funds shall be considered only when an *individual* project's estimated eligible costs exceed \$300,000
- ☐ Funds may be allocated for construction of an access road project to an eligible site that is owned by a regional industrial facility authority, created pursuant to §15.2-6402 of the Code of Virginia, without penalty to the jurisdiction in which the site is located. This provision may be applied to one regional project per fiscal year in any jurisdiction, subject to the same funding limitations as prescribed for other individual projects.

TYPE OF PROJECT

- ☐ Qualifying Industry – (where it has been determined that a named industry is eligible and the industrial site does not have adequate access)
 - ☐ Determination by VDOT and VDBA (Dept. of Business Assistance)
 - ☐ Documentation of Eligible Capital Outlay – (figure 10% for purpose of justifying road costs)
 - ☐ Reimbursement based on actual project cost, not to exceed 10% of the documented eligible capital outlay of industry(s) served
- ☐ Bonded Project – (where site(s) is (are) determined not to have adequate access and the locality is willing to guarantee that eligible capital investment will occur warranting the use of the access road funds)
 - ☐ Determination by VDOT and VDBA (Dept. of Business Assistance)
 - ☐ Provision of bond by locality for 5 year period beginning with date of CTB

allocation

- ☐ Reimbursement based on eligible capital outlay (again, 10%) (established w/in 5 year bond period) of industry(s) served in relation to cost of project

REQUEST & PROJECT INFORMATION SUBMITTAL

- ☐ Coordination of locality's project request initiated through VDOT's Resident Engineer (then, District office and Secondary Roads Division)
- ☐ Locality's governmental body provides resolution request
- ☐ For a 'Qualifying Industry' project - Description of proposed company/development (i.e., investment, facilities, target dates for completion/operation, number of employees, products manufactured, etc.)
- ☐ Description of project, anticipated traffic type and volume (with consideration toward adequacy of surrounding existing road system), anticipated funding source(s) and a detailed estimate of road project costs (eligible costs are to be based on a rural typical section design)
- ☐ SERP – Please note that the State Environmental Review Process (SERP) must be conducted and completed prior to initiating work on all state-funded projects
- ☐ Project administration (project design and construction-contract administration responsibilities)
- ☐ Location map/plat delineating parcels to be served (project right of way to be certified by State Right of Way Director prior to expenditure of Industrial Access funds)

SECONDARY ROADS DIVISION REVIEW

- ☐ If appropriate, assemble information and recommend proposed project to CTB for consideration (CTB agenda is set 2 weeks prior to CTB meeting which is usually held on the 3rd Thursday of each month)

CTB REVIEW

- ☐ CTB's Access Roads and Ground Transportation Committee reviews for recommendation to CTB
- ☐ If acceptable, CTB allocates from the Industrial, Airport and Rail Access Fund
- ☐ Locality-VDOT Agreement – Required if project is to be administered by locality; may be necessary even if project is to be administered by VDOT